

# Notice of Allowability

## Application No.

10/067,457

## Examiner

Sandra Wegert

## Applicant(s)

JANSEN ET AL.

## Art Unit

1647

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 7/26/04.
2. ☒ The allowed claim(s) is/are 1-6, 9-32 and 51 (renumbered as 1-31).
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☒ Certified copies of the priority documents have been received in Application No. 09/779,587.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

- |   |  |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|   | 9. <input type="checkbox"/> Other _____.   |

### **DETAILED ACTION**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The Restriction requirement of 10 September 2003 is hereby withdrawn.

Authorization for this examiner's amendment was given in a telephone interview with Joel German on 1 November 2004.

#### **The application has been amended as follows:**

Non-elected Claims 7, 8, 33-50 and 52-65 have been cancelled.

### **REASONS FOR ALLOWANCE**

The following is an examiner's statement of reasons for allowance:

The method of the instant Application is essentially a FLIPR assay for measuring potential differences in hyperpolarization-activated cation channels, such as those of the HCN family, in which the buffer is modified from that typically used in the current FLIPR literature (see, for example, Hodder, et al, 2004, J. Biomol. Screening, 9(5): 417-426). The assay

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comprises an isoosmolar sodium-ion-free buffer in which sodium chloride has been replaced with osmolites such as oxonol derivatives. These modifications result in the ability to measure fluorescent changes due to very small voltage changes, such as those transmitted through hyperpolarization-activated channels (see, for example, Krahn, et al, US Patent 6,420,183, columns 1 and 2). The claims of the instant application are directed to the methods and buffers used in the assay. The claims are free of the prior art as the prior art discloses using FLIPR for measuring calcium changes in non-voltage sensitive channels and receptors, such as neurotransmitter receptors (Hodder, et al, 2004, J. Biomol. Screening, 9(5): 417-426). The specification provides experimental evidence of utility and enablement under 35 U.S.C. 112, first paragraph.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Advisory Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sandra Wegert whose telephone number is (571) 272-0895. The examiner can normally be reached Monday - Friday from 9:00 AM to 5:00 PM (Eastern Time).

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If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Brenda Brumback, can be reached at (571) 272-0961.

The fax number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLW

30 October 2004

A handwritten signature in black ink, reading "Lorraine Spector". The signature is fluid and cursive, with a large loop at the beginning of the "L" and a long, sweeping tail that extends to the right.

LORRAINE SPECTOR  
PRIMARY EXAMINER